

### REMARKS/ARGUMENTS

New claim 19 has been added.

Claim 10 has been amended to recite, *inter alia*, that the propellant gas component comprises a mixture of propellant gases wherein at least 2/3 of the propellant gases are non-polar propellants wherein such non-polar propellants have a log P<sub>O/W</sub> value of at least 1.35. Support for these amendments can be found from page 5, lines 17-19 and page 6, lines 16-17 of the specification.

Applicant requests that the examiner reconsider his previous rejections particularly with respect to a new argument presented below.

With respect to the reasons forwarded by the office action for the rejection of claims 6-11, 17 and 18, Applicant respectfully submits that a prima facie case of anticipation by "inherency" has not be shown. MPEP 2131.01 III states;

"To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill."

*Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991) (My emphasis added).

Applicants claim 17 recites, *inter alia*, "methyldimethoxysilane groups and the propellant gas component has a log P<sub>O/W</sub> value of  $\geq 1.90$ " and claim 18 recites, *inter alia*, "trimethoxysilane groups and the propellant gas component has a log P<sub>O/W</sub> value of  $\geq 2.35$ ."

With respect to the disclosure of DE 198 31 285, the following is shown:

1) Example 1 of DE'285 only describes a triethoxysilane terminated prepolymer that is foamed with isobutane. There is no mention of the necessary elements as claimed in 17 and 18, that is the use of methyldimethoxysilane or trimethoxysilane groups with butane.

2) DE'285 also discloses any combination of propellants. However, they do not necessarily disclose using i) propellants with log P<sub>O/W</sub> values of  $\geq 1.90$  or  $\geq 2.35$  and/or

ii) such ranges in combination with using either methyldimethoxysilane or trimethoxysilane groups, as claimed. Similarly they do not disclose using log  $P_{O/W}$  values of at least 1.35 (claim 10).

3) Although, DE'285 mentions as an example using trimethoxysilane groups, there is no mention that it must be necessarily accompanied with the use of a "propellant gas component has a log  $P_{O/W}$  value of  $\geq 2.35$ ."

Indeed, of the specifically named propellant gases disclosed in DE'285, applicant submits now that many of them have a log  $P_{O/W}$  of less than 1.90, to wit:

| Propellant | Partition coefficient |
|------------|-----------------------|
| r125       | 1.48                  |
| r134a      | 1.06                  |
| 152a       | 0.5086                |
| dme        | 0.1                   |

Thus a person of skill in the art would not necessarily appreciate that DE'285 discloses using combinations of specific silyl groups and gas propellants that are claimed. Accordingly, there cannot be anticipation by 'inherency.'

Applicant independently traverses the rejection of claim 10. Applicant submits that claim 10 is not inherently disclosed by DE'285. Here, claim 10 recites, *inter alia*, that the propellant gas component comprises a mixture of propellant gases wherein at least 2/3 of the propellant gases are non-polar propellants wherein such non-polar propellants have a log  $P_{O/W}$  value of at least 1.35. In this respect, DE'285 only discloses that one or more combinations of propellant gases can be used. Thus, DE'285 does not necessarily disclose these claim limitations of this claim.

Applicant independently traverses the rejection of claim 19. With respect to claim 19, which depends upon claims 17 or 18, applicant submits, notwithstanding the arguments made for independent claims 17 and 18 above, that the additional combination

of wherein the propellant gas component comprises a mixture of at least two propellant gases to such independent claims is not expressly or inherently anticipated by DE'285.

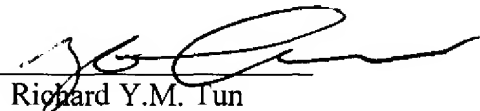
In view of the foregoing amendments and remarks, Applicant respectfully requests that a Notice of Allowance be issued.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-3881, under Order No. 7609-101 from which the undersigned is authorized to draw.

Dated: April 12, 2010

Respectfully submitted

By



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